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Terms of Service

This Agreement was last revised on March 30, 2010.

Recent updates to this Agreement

Welcome to Gowalla, a website and online and mobile service of Gowalla, Inc. ("Gowalla," "we," or "us"). This page explains the terms by which you may use the Gowalla web site, web widgets, feeds, mobile device software applications (the "Gowalla Software"), application program interfaces, applications for third-party web sites and services, and any other web or mobile services or applications owned, controlled, or offered by Gowalla in association with this site (collectively the "Service"). By accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement ("Agreement"), whether or not you are a registered user of our Service.

We reserve the right to amend this Agreement at any time by notifying you as provided in this Agreement, provided that no notice shall be required for non-substantive changes to the Agreement. If we substantively amend this Agreement, we will give you at least seven (7) days notice before the changes take effect, during which period of time you may reject the changes by terminating your account. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Use Agreement. If you do not agree to any of these terms or any future Terms of Use Agreement, do not use or access (or continue to access) the Service. This Agreement applies to all visitors, users, and others who access the Service ("Users").

1) Use of Our Service

Gowalla provides a new way to explore your neighborhood and the world, share your travels with your friends, and collect souvenirs that reflect your personal path. You do not have to register in order to visit Gowalla. To access certain features of the Service, though, such as connection through your mobile device and the ability to make friends, you will need to register with Gowalla and create a "Member" account. Your Member account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion.

This Service is intended solely for Users who are thirteen (13) years of age or older, and any registration, use or access to the Service by anyone under 13 is strictly prohibited and in violation of this Agreement. If you are under 18 years of age you may use the Service only if you either are an emancipated minor or have the consent of your parent or legal guardian, and are fully able and competent to enter into this Agreement and to abide by and comply with its terms.

You may never use another Member's account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Gowalla immediately of any breach of security or unauthorized use of your account. Although Gowalla will not be liable for your losses caused by any unauthorized use of your account, you shall be liable for the losses of Gowalla or others due to such unauthorized use.

You may control your Member profile and how you interact with the Service by changing your settings on the Service. By providing Gowalla your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address or mobile phone telephone number to send you other messages, including changes to features of the Service and special offers. If you do not want to receive such messages, you may opt out or change your preferences by changing your settings. Opting out may prevent you from receiving messages regarding updates,

improvements, or offers.

You agree to use the Service only in accordance with our [Acceptable Use policy](#).

You assume all risks arising in connection with seeking or creating a location on the Service (a "Spot") or any other related activity. Always exercise common sense and caution. For instance, setting your home as a Spot advertises your address to the world –maybe not a good idea.

All aspects of the Service are subject to change or elimination at Gowalla 's sole discretion. Gowalla reserves the right to interrupt the Service an/or to permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Service with or without prior notice for any reason or no reason. You agree that Gowalla will not be liable to you for any interruption of the Service or your account.

You are solely responsible for your interactions with other Gowalla Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. Gowalla shall have no liability for your interactions with other Users, or for any User's action or inaction.

2) User Content

Some areas of the Service may allow Users to post and/or create Spots, feedback, comments, questions, and other information (collectively "User Content"). You are solely responsible for your User Content that you upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. You agree to comply with the [Acceptable Use Policy](#) in posting User Content.

Gowalla takes no responsibility and assumes no liability for any User Content that you or any other User or third party posts or sends over the Service. You understand and agree that any loss or damage that occurs as a result of the use of any User Content that you make available or access through your use of the Service, including without limitation your posting of or visits to Spots, is solely your responsibility. Gowalla is not responsible for any public display or misuse of your User Content. You may be exposed to User Content that is inaccurate or objectionable.

Please see our [Copyright Policy](#).

3) License Grant

By posting any User Content on the Service, you expressly grant, and you represent and warrant that you have a right to grant, to Gowalla a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, publicly perform, publicly display, and make derivative works of all such User Content and your name, voice, and/or likeness as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Service.

4) End User Licenses

- A. **Gowalla Service.** Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, personal license to use the Service. Gowalla reserves all rights not expressly granted herein in the Service and the Gowalla Content (as defined below). Gowalla may terminate this license at any time for any reason or no reason.
- B. **Gowalla Software.** To use the Gowalla Software you must have a mobile device that is compatible with the Gowalla Service. Gowalla does not warrant that the Gowalla Service will be compatible with your mobile device.
 1. **License Grant.** Gowalla hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Gowalla Software for one Gowalla Member account on one mobile device owned or leased solely by you, for your personal use.
 2. **Restrictions.** You may not: (i) modify, disassemble, decompile or reverse engineer the Gowalla Software, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Gowalla Software to any third party or use the Gowalla Software to provide time sharing or similar services for any third party; (iii) make any copies of the Gowalla Software; (iv) remove, circumvent, disable, damage or otherwise interfere

- with security-related features of the Gowalla Software, features that prevent or restrict use or copying of any content accessible through the Gowalla Software, or features that enforce limitations on use of the Gowalla Software; or (v) delete the copyright and other proprietary rights notices on the Gowalla Software.
3. **Software Upgrades.** You acknowledge that Gowalla may from time to time issue upgraded versions of the Gowalla Software, and may automatically electronically upgrade the version of the Gowalla Software that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades.
 4. **Third-Party Code.** Any third-party code that may be incorporated in the Gowalla Software is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code.
 5. **Rights Reserved.** The foregoing license grant under this Agreement is not a sale of the Gowalla Software or any copy thereof and Gowalla or its third party partners or suppliers retain all right, title, and interest in the Gowalla Software (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. Gowalla reserves all rights not expressly granted under this Agreement.
 6. **Government End Users.** If the Gowalla Software is being acquired on behalf of the United States Government, then the following provision applies. Use, duplication, or disclosure of the Gowalla Software by the U.S. Government is subject to restrictions set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.
 7. **Export Control.** The Gowalla Software originates in the United States, and is subject to United States export laws and regulations. The Gowalla Software may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Gowalla Software may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Gowalla Software and the Gowalla Service.
 8. **Gowalla Software from iTunes.** The following applies to any Gowalla Software you acquire from the iTunes Store ("iTunes-Sourced Software"): You acknowledge and agree that this Agreement is solely between you and Gowalla, not Apple, and that Apple has no responsibility for the iTunes-Sourced Software or content thereof. Your use of the iTunes-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the iTunes-Sourced Software. In the event of any failure of the iTunes-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the iTunes-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the iTunes-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to Gowalla as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the iTunes-Sourced Software or your possession and/or use of the iTunes-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the iTunes-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to Gowalla as provider of the software. You acknowledge that, in the event of any third party claim that the iTunes-Sourced Software or your possession and use of that iTunes-Sourced Software infringes that third party's intellectual property rights, Gowalla, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and Gowalla acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement as relates to your license of the iTunes-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the iTunes-Sourced Software against you as a third party beneficiary thereof.

5) Our Proprietary Rights

Except for your User Content, all right, title, and interest in and to the Service and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics,

illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and User Content (the "Gowalla Content") are and will remain the exclusive property of Gowalla and its licensors. You agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the Gowalla Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited.

Any feedback, comments, or suggestions you may provide regarding Gowalla or the Services is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

6) Paid Services; Fictional Property

- A. **Billing Policies.** Certain aspects of the Service may be provided for a fee or other charge. If you elect to use paid aspects of the Gowalla Service, you agree to the pricing, payment and billing policies applicable to such fees and charges. Gowalla may add new services for additional fees and charges, or amend fees and charges for existing services, at any time in its sole discretion.
- B. **Funding Accounts.** Certain aspects of the Gowalla Service may allow you to purchase fictional currency ("Gowalla Currency") for deposit in a fictional financial account ("Funding Account"). A Funding Account is not a bank deposit and you will not receive any interest on fictional funds in your Funding Account. You acknowledge that you do not own the account you use to access the Gowalla Service, nor do you possess any rights of access or rights to data stored by or on behalf of Gowalla on Gowalla servers (including without limitation any data representing or embodying any or all of your Currency or other fictional property). All data on Gowalla's servers are subject to deletion, alteration or transfer.
- C. **Gowalla Currency.** You understand and agree that regardless of terminology used, Gowalla Currency constitutes a limited license right to use a feature of our product when, as, and if allowed by Gowalla. Gowalla Currency is not redeemable for any sum of money or monetary value from Company at any time. You agree that Gowalla has the absolute right to manage, regulate, control, modify and/or eliminate such Gowalla Currency as it sees fit in its sole discretion, in any general or specific case, and that Gowalla will have no liability to you based on its exercise of such right.
- D. **Fictional Property.** When using the Gowalla Service, you may accumulate fictional property related to the Gowalla Service that reside as data on Gowalla's servers. NOTWITHSTANDING ANY VALUE ATTRIBUTED TO SUCH DATA BY YOU OR ANY THIRD PARTY, YOU UNDERSTAND AND AGREE THAT THESE DATA, AND ANY OTHER DATA, ACCOUNT HISTORY AND ACCOUNT CONTENT RESIDING ON GOWALLA'S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN GOWALLA'S SOLE DISCRETION. GOWALLA DOES NOT PROVIDE OR GUARANTEE, AND EXPRESSLY DISCLAIMS, ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO ANY SUCH DATA RESIDING ON GOWALLA'S SERVERS.
- E. **No Refunds.** You may cancel your Gowalla Account and/or Funding Account at any time; however, there are no refunds for cancellation. As permitted under the terms of this Agreement, Gowalla has the right at any time for any reason or no reason to suspend or terminate your Account and/or Funding Account, terminate this Agreement, and/or refuse any and all current or future use of the Service without notice, refund, obligation, or liability to you. In the event that Gowalla suspends or terminates your Gowalla Account, Funding Account, or this Agreement, you understand and agree that you shall receive no refund or exchange for any Gowalla Currency, any unused time on a subscription, any license or subscription fees for any portion of the Gowalla Service, any content or data associated with your Gowalla Account, or for anything else.

7) Privacy

We care about the privacy of our Users. [Click here to view our Privacy Policy](#). By using the Service, you are consenting to have your personal data transferred to and processed in the United States.

8) Security

We have implemented commercially reasonable technical and organizational measures designed to implement your privacy settings and secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for

improper purposes. You acknowledge that you provide your personal information at your own risk.

9) Additional Representations and Warranties

In connection with your User Content, you affirm, represent and warrant, in addition to the other representations and warranties in this Agreement, that: (a) you are at least 18 years of age; (b) you have the written consent of each and every identifiable natural person in the User Content to use such person's name or likeness in the manner contemplated by the Service and this Agreement, and each such person has released you from any liability that may arise in relation to such use; (c) your User Content and Gowalla's use thereof as contemplated by this Agreement and the Service will not infringe any rights of any third party, including but not limited to any Intellectual Property Rights, privacy rights and rights of publicity; and (d) Gowalla may exercise the rights to your User Content granted under this Agreement without liability for payment of any guild fees, residuals, payments, fees, or royalties payable under any collective bargaining agreement or otherwise.

10) Third-Party Links

Gowalla may contain links to third-party websites, advertisers, or services that are not owned or controlled by Gowalla. Gowalla has no control over, and assumes no responsibility or liability for, the content, privacy policies, or practices of any third party websites or services. If you access a third party website from Gowalla, you do so at your own risk, and you understand that this Agreement and Gowalla's Privacy Policy do not apply to your use of such sites. You expressly relieve Gowalla from any and all liability arising from your use of any third-party website or services or third party owned content.

We encourage you to be aware of when you leave the Service, and to read the terms and conditions and privacy policy of any third-party website or service that you visit.

11) Indemnity

You agree to defend, indemnify and hold harmless Gowalla and its subsidiaries, agents, managers, partners (including, without limitation, its wireless carrier partners), and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of any of your User Content or any that is submitted via your account; (vi) any other party's access and use of the Service with your unique username, password or other appropriate security code; or (vii) your use the Service to meet another User in-person or to locate and/or visit any offline place or event.

12) No Warranty

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WITHOUT LIMITING THE FOREGOING, GOWALLA, ITS PARTNERS AND LICENSORS DISCLAIM ANY WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WE DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

13) Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL

GOWALLA, ITS AFFILIATES, DIRECTORS, EMPLOYEES OR ITS LICENSORS OR PARTNERS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM (A) THE USE, DISCLOSURE, DISPLAY, OR MAINTENANCE OF YOUR LOCATION INFORMATION; (B) YOUR USE OR INABILITY TO USE THE SERVICE; (C) THE SERVICE GENERALLY OR THE SOFTWARE OR SYSTEMS THAT MAKE THE GOWALLA SERVICES AVAILABLE; OR (D) ANY OTHER INTERACTIONS WITH GOWALLA OR ANY OTHER USER OF THE GOWALLA SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT GOWALLA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

The Service is controlled and operated from its facilities in the United States. Gowalla makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

14) Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Gowalla without restriction.

15) General

- A. **Governing Law.** You agree that: (i) the Service shall be deemed solely based in California; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over Gowalla, either specific or general, in jurisdictions other than California. This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any claim or dispute between you and Gowalla that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County, California, unless submitted to arbitration as set forth in the following paragraph.
- B. **Arbitration.** For any claim (excluding claims for injunctive or other equitable relief) under this Agreement where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute through binding non-appearance-based arbitration. The party electing such arbitration shall initiate the arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, as selected by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- C. **Notification Procedures.** Gowalla may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by Gowalla in our sole discretion. Gowalla reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement.
- D. **Entire Agreement/Severability.** This Agreement, together with any amendments and other legal terms referenced in the Agreement, shall constitute the entire agreement between you and Gowalla

concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

- E. **No Waiver.** No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Gowalla's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.
- F. **Survival.** You continue to be bound by this Agreement after termination of your account.

Please contact us with any questions regarding this Agreement.

Gowalla, Inc.
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Austin, TX 78701
(817) 428-4248
live@gowalla.com

Updates

November 3, 2009: We made a number of changes to simplify the Agreement. We also added a notice period for any future amendments we make to the Agreement. Please review the revised Agreement carefully.

January 29, 2010: We updated our company name throughout the Agreement. Goodbye, Alamofire. Hello, Gowalla.

March 30, 2010: We changed our age policy in Section 1.



Username/Email

Password

[Forgot password?](#)



Enter your email address and we'll send you a link to reset your password.

Email